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No. 307

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

LOUISIANA PUBLIC SERVICE COMMISSION,
Petitioner,

v.

FEDERAL POWER COMMISSION, UNITED GAS PIPELINE COMPANY, WILLMUT GAS AND OIL COMPANY, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

(Volume I)

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner, Louisiana Public Service Commission (hereafter "Louisiana Commission"), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on April 6, 1966, covering three cases jointly argued and decided, namely, *Louisiana Pub. Serv. Comm'n.* v. *FPC,* No. 21705; *Louisiana Gas Serv. Co.* v. *FPC,* No. 21706; *Hammond-Baton Rouge Brick Co., et al,* v. *FPC,* No. 21707. That judgment denied three petitions to set aside an order of the Federal Power Commission (hereafter "the Commission"), and, in effect, affirmed that order in which the Commission ruled that it, and not the Louisiana Commission, has jurisdiction to regulate natural gas sales for resale by United Gas Pipeline Company to Louisiana distributors

within a certain area of the State of Louisiana. This order of the Commission reverses in part the Initial Decision of the Commission's Presiding Examiners, sustaining Louisiana Commission jurisdiction over some of the sales in question.

Opinions Below

The Initial Decision of the Presiding Examiner is reported at 30 F.P.C. Reports 580, and appears in the Appendix, Vol. II at pp. 1-8. The Opinion and Order of the Commission is reported at 30 F.P.C. 560, and appears in the Appendix, Vol. II at pp. 53-90. The Opinion and Order of the Commission denying rehearing is reported at 31 F.P.C. 1152, and appears in the Appendix, Vol. II at pp. 95-102. The Opinion of the Court of Appeals (Brewster, D. J.) is reported at 359 F.2d 525, and appears in the Appendix herein at page 16. The Judgment of the Court of Appeals appears in the Appendix herein at page 21.

Jurisdiction

The Opinion of the Court of Appeals was filed on April 6, 1966, and the Judgment of the Court of Appeals was filed on May 2, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

Questions Presented

1. Is a sale of gas, none of which has crossed or will cross a state line, at any stage of its movement from wellhead to ultimate consumption, a "sale in interstate commerce" within the meaning of the Natural Gas Act, 15 U.S.C. 717(b), merely because the gas sold was transported, to its point of sale and removal from the pipeline, along with other gas that never has crossed but will cross a state line?

Statutes Involved

The statutes primarily involved are sections of the Natural Gas Act, 15 U.S.C. §§ 717(b), 717a(7) and 717r, which relate to jurisdiction conferred upon the Commission, the definition of "interstate commerce" and to judicial review of final orders. These statutes are contained in the Appendix herein, *infra*, at p. 13.

Statement

1. United Gas Pipeline Company (hereafter "United") transports and sells gas, primarily at wholesale, in several Southern states, including Louisiana. (R. 537) Many of United's sales at wholesale are regulated by the Louisiana Commission (R. 67-68, 122-124) and include all of the wholesale sales in the Metropolitan New Orleans area which are not involved directly in this proceeding, but may be affected by the outcome. The sales by United involved in this proceeding are made at wholesale to Louisiana distributors within the so-called Florida Parishes area, which roughly is an area lying east of Baton Rouge, north of Lake Ponchartrain and bounded otherwise by the Mississippi State line (R. 538).

United serves the Florida Parishes through two main transmission lines, namely the Napoleonville-Kosciusko line and the Lirette-Mobile line. All of the gas in the Lirette-Mobile line is produced within the boundaries of the State of Louisiana. A relatively small amount of the gas in the Napoleonville-Kosciusko line is produced in the area offshore from the mainland of Louisiana, and the remainder and much more substantial portion is produced within the boundaries of Louisiana. (R. 88-89, 513) Most of the gas in both lines is transported by United northward

and eastward for sale and consumption in other states. (R. 94-96, 533-535)

Neither the Commission nor the Court of Appeals reached the question of the status of the gas produced from offshore, and its effect, if any, on the jurisdictional questions involved. Both the Commission and the Court of Appeals assumed that their respective decisions would be the same even if all of the gas involved in the sales in question were produced within the boundaries of the State of Louisiana.

The Commission historically regulated United's wholesale sales of gas in the Florida Parishes because, up until approximately 1951, the gas sold there emanated from sources outside the State of Louisiana. Since that time all of the gas sold there has been produced within Louisiana borders, except the relatively small portion of "offshore" gas mentioned above. (R. 61-64, 133-134)

The Commission's Presiding Examiner, after reviewing at length the authorities and after extensive briefing, concluded that sales from the Lirette-Mobile line were subject to the jurisdiction of the Louisiana Commission, and that sales from the Napoleonville-Kosciusko line were subject to Commission jurisdiction under the Natural Gas Act. (R. 665-704) (Appendix Vol. II, pp. 1-51)

The Commission in a 3-2 decision, reversed the Presiding Examiner in part, and held that the sales by United from both lines, in the Florida Parishes, were subject to the Commission's jurisdiction. (R. 825-841) (Appendix Vol. II, pp. 52-68)

Applications for rehearing were filed by all petitioners, the Commission granted a rehearing and subsequently issued an additional 3-2 opinion and order upholding its original position. (R. 928, 950-957) (Appendix Vol. II, pp. 95-102)

On separate petitions for review filed with the United States Court of Appeals for the Fifth Circuit by the

Louisiana Commission, Louisiana Gas Service Company and Hammond-Baton Rouge Brick Company, et al, the Court of Appeals affirmed the Commission's order solely on this Honorable Court's decisions rendered in *California* v. *Lo-Vaca Gathering Co.*, 379 U. S. 366, 85 S.Ct. 486, 13 L.Ed. 2d 357 (1965) and *FPC* v. *Amerada Petroleum Corp.*, 379 U.S. 687, 85 S.Ct. 632, 13 L.Ed. 2d 605 (1965).

2. The Louisiana Commission's Petition for Review of Orders of the Federal Power Commission issued on August 26, 1963, and May 11, 1964, in Docket No. CP62-161 was filed and docketed July 10, 1964, in the United States Court of Appeals for the Fifth Circuit. Jurisdiction was invoked under provision of the Natural Gas Act, 15 U.S.C. 717r(b).

Reasons for Granting the Writ

1. The question presented herein brings for the first time before the United States Supreme Court a conflict between state and federal regulation of a sale of gas produced, transported, delivered and consumed entirely within one state. It places in jeopardy the right enjoyed by the State of Louisiana to protect the interest of its citizens in the maintenance of reasonable prices of natural gas in the Florida Parishes area, as well as in other areas of the State in which local regulation prevails without controversy.

The Louisiana Commission has a substantial interest in protecting its citizens against the payment of unreasonable prices for natural gas, and it is in closer proximity to both the pipeline company and the distributors than is the Commission, which closeness provides greater accessibility to information required for responsible rate making. This will allow the most effective and efficient regulation of the wholesale sales at issue.

The exercise of federal jurisdiction is often buttressed by, indeed, predicated upon, the fear of discrimination against

interstate consumers by various means and methods, *e.g.*, higher interstate rates due to lower intrastate rates; local selectivity of local sellers or buyers; improper allocation of resources to local needs. The Louisiana Commission is concerned about discrimination against Louisiana citizens due to federal regulation by a federal body which is further removed from the local scene. It is interested in Louisiana citizens paying no more for their home-produced gas than actual cost plus reasonable profit dictates, and it fears that rates set for interstate users will not include their fair share of the cost proportionate to supplying the gas to such users and that consequently, rates in Louisiana will be higher than justified by the actual proportionate cost required to supply Louisiana users.

The State of Louisiana is the only state whose jurisdiction over the type of sales at issue has been judically questioned. Previous judicial controversies over proper jurisdiction have involved sales of gas either produced outstate or transported in an interstate pipeline beyond the point at which the sale occurred. The facts herein come before this Court for the first time.

In *Illinois Gas Co.* v. *Cent. Illinois Pub. Serv. Co.*, 314 U.S. 498, 62 S.Ct. 384, 86 L.Ed. 371 (1942) gas produced in one state was sold at the state line to a distributor in another state for resale in the latter state.

In *Interstate Natural Gas Co.* v. *FPC*, 331 U.S. 682, 67 S.Ct. 1482, 91 L.Ed. 1742 (1947) gas was sold in the state of production to three interstate pipeline companies which transported the gas to markets in other states.

In *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366, 85 S.Ct. 486, 13 L.Ed. 2d 357 (1965) gas was sold in the state of production by a gathering company and pipeline company to an interstate pipeline company which transported

the gas with gas from other sources to markets in other states. The pipeline company intended to use the gas directly for fuel in its facilities both in the state of production and outside that state and contracted to remove from the pipeline, for that purpose, a volume of gas in excess of the volumes purchased. The gas sold was transported beyond the point of the sale in the pipeline with other gas destined for interstate markets.

In *FPC* v. *Amerada Petroleum Corp., supra,* this Court stated that the facts therein were "on all fours with *California* v. *Lo-Vaca Gathering Co. . . .*" *Id.* at 690, 85 S.Ct. at 634, 13 L.Ed. 2d at 607.

In none of the above referred to cases was there a sale of gas produced, transported, delivered and consumed entirely within the same state, consequently this Court is called upon to determine this significant issue of jurisdiction based upon these classic intrastate facts.

2. The decision of the Court of Appeals conflicts in principle with decisions of this Court subsequent to the enactment of the Natural Gas Act and conflicts with a principle established by this Court prior to the Act.

Subsequent to the enactment of the Natural Gas Act this Court held a sale of gas for resale to an interstate pipeline, in the state in which the gas is produced, is a sale "in interstate commerce" when the gas sold is destined for consumption in markets outside the producing state. *Interstate Natural Gas Co.* v. *FPC, supra.* Later, this Court held a sale of gas to an interstate pipeline, in the state in which the gas is produced, for direct industrial use, both inside and outside the producing state, is a sale "in interstate commerce", notwithstanding "restricted use" contracts, when the gas sold is transported in the pipeline beyond the point of the sale with gas from other sources destined for markets

outside the producing state, and when a portion of the gas sold will in fact be sold outside the producing state.[1] *California* v. *Lo-Vaca Gathering Co., supra; FPC* v. *Amerada Petroleum Corp., supra.*

This Court stated in the *Lo-Vaca Gathering Co.* case that "the result of our decisions is to make the sale of gas, which crosses a state line at any stage of its movement from well-head to ultimate consumption, 'in interstate commerce' within the meaning of the Act."[2]

The gas involved in the sales in question never has crossed a state line and never will. Thus, the principles set forth above do not support federal jurisdiction in the instant case and, far from settling against petitioner the question here involved, as is stated by the Court of Appeals, they actually establish a clear guideline for determining jurisdiction which was ignored by the Court of Appeals.

Moreover, the Court of Appeals incorrectly interpreted this Court's meaning of "entire transaction", as including all sales made subsequent to the sales at issue in the *Lo-Vaca Gathering Co.* case,[3] and also, improperly substituted a different reason for the one stated by this Court that federal jurisdiction is invoked "at the outset over the entire transaction."[4]

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[1] "In spite of these 'restricted use' covenants, it is conceded that the gas sold by Lo-Vaca and Houston to El Paso will flow in a commingled stream with gas from other sources and that *at least a portion of the gas will in fact be resold out of Texas.*" (Emphasis supplied) *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366, 368, 85 S.Ct. 486, 487, 13 L.Ed. 2d 357, 359 (1965). Same finding was made in *FPC* v. *Amerada Petroleum Corp., supra.*

[2] 379 U.S. at 369, 85 S.Ct. at 488, 13 L.Ed. 2d at 360.

[3] At 379 U.S. at 369, 85 S.Ct. at 488, 13 L.Ed. 2d 360, this Court stated: "The fact that a substantial part of the gas will be resold, in our view, invokes federal jurisdiction at the outset over the entire transaction."

[4] See quote at note 3, *supra.* The Court of Appeals restated this proposition thusly: "[T]he mixing of intrastate gas with a substantial portion of interstate gas for pipeline transportation in one commingled stream

The "entire transaction", referred to by this Court in the *Lo-Vaca Gathering Co.* case clearly only encompasses the sales at issue by that company and Houston Pipe Line Company to El Paso Natural Gas Co., and not subsequent sales to distributors made at a point farther along the pipeline, like the sales by United in the instant case. The reason given by this Court for federal jurisdiction is "the fact that part of the gas will be resold", and not the fact of commingling of intrastate and interstate gas.[5]

The principle established by this Court in *People's Gas Co.* v. *Pub. Serv. Comm'n,* 270 U.S. 550, 46 S.Ct. 371, 70 L.Ed. 726 (1926), prior to the Natural Gas Act, has never been modified. In this case this Court held that the transportation of intrastate gas with interstate gas does not alter the character of the intrastate gas; that gas produced, transported and sold to distributors in the same state in which it is produced, is intrastate gas even though it is transported with gas produced in another state. Thus, the mixing and transportation of gas produced in the state of consumption with gas produced outside the state of consumption, prior to a sale of the former gas does not destroy the intrastate character of the sale of the volume of gas produced in the state of consumption.

This very significant and unmodified principle was ignored by the Court of Appeals while in the instant case the facts more readily support state jurisdiction than do the facts in the *People's Gas Co.* case, for the gas involved in the sales at issue is not mixed and transported with gas produced in another state.

3. The decision of the Court of Appeals conflicts in

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gave the Commission jurisdiction 'at the outset over the entire transaction.'" Opinion at Appendix, p. 21, *infra.*

[5] The only issue was whether "the sale in interstate commerce of natural gas [was] for resale," 15 U.S.C. 717 (b).

principle with the decision in *Deep So. Oil Co.* v. *FPC*, 247 F. 2d 882 (5th Cir. 1957) that jurisdiction of the Commission extends to well-head sales of gas ultimately to be transported and consumed somewhere across the state line.

In the *Deep So. Oil Co.* case federal jurisdiction is predicated upon the destination of the gas sold and this basis is fully supported in *Interstate Natural Gas Co.* v. *FPC, supra.*

Although the *Interstate Natural Gas Co.* case is authority for finding that the *gas* in United's pipeline is transported "in interstate commerce", it cannot be said that the *sales* at issue are "in interstate commerce" by virtue of anything held or said in either the *Interstate Natural Gas Co.* or *Deep So. Oil Co.* cases, for the sales therein were "in interstate commerce" due to an expectancy, the occurrence of which is positively precluded by the sales at issue in the instant case. Moreover, in neither of those cases does either court even suggest that the interstate characteristic of the gas is unalterable.[6]

The importance of this Court granting the writ is further manifest from the case by case method of review utilized in these types of cases, *California* v. *Lo-Vaca Gathering Co., supra,* and the recognition in concurring opinions that "in spite of original commingling there might be a separate so-called nonjurisdictional transaction of a precise amount of gas. . . ."[7]

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[6] Petitioner does not subscribe to the view that gas *per se* is in "interstate" commerce. The jurisdictional questions are whether the *transportation* of gas or the *sale* of gas is "in interstate commerce". This is the fundamental error committed by the Commission.

[7] Justice Goldberg, joined by Justice Stewart, concurring; separately joined by Justice Harlan. *FPC* v. *Amerada Petroleum Corp.*, 379 U.S. 687, 690, 85 S.Ct. 632, 634, 13 L.Ed. 2d 605, 607 (1965). Moreover, the majority opinion in the *Lo-Vaca Gathering Co.* states: "Whether cases could be conjured up where in spite of original commingling there might be a separate so-called nonjurisdictional transaction of a precise amount of gas not-for-resale within the meaning of the Act is a question we need not reach." 379 U.S. at 370, 85 S.Ct. at 489, 13 L.Ed. 2d at 361.

4. The Court of Appeals interpreted the Natural Gas Act contrary to its intents and purposes that clearly appear from its legislative history. In so doing, the Court of Appeals ignored and disregarded that history which is before this Court for the first time.

Quite clearly, the Act confers jurisdiction over both a "sale in interstate commerce" and over the "transportation of natural gas in interstate commerce." 15 U.S.C. 717(b). A sale should not be characterized "in interstate commerce" simply because the previous transportation or sale of the gas sold was regulated by the Commission pursuant to the Act. Congress left no doubt about this jurisdictional distinction when it discarded section 1(b) of H. R. 4008, 75th Cong., 1st Sess. (1937), which conferred jurisdiction over the sale of natural gas transported in interstate commerce, and enacted 15 U.S.C. 717(b),[8] which conferred jurisdiction over the sale in interstate commerce of natural gas. THE JURISDICTIONAL QUESTION IS WHETHER THE SALE ITSELF IS IN INTERSTATE COMMERCE AND NOT WHETHER THE SALE IS OF NATURAL GAS TRANSPORTED IN INTERSTATE COMMERCE. The decision of the Court of Appeals that the sales in question are in interstate commerce because the gas sold is previously mixed with gas destined for interstate markets (interstate gas) while intransit is manifestly contrary to what the law makers intended, and would be in harmony with the Act only if section 1(b) of H. R. 4008 had been enacted as 15 U.S.C. 717(b).

Congressional discussion of H. R. 6586, ultimately passed as the Natural Gas Act, makes it clear that wholesale sales to distributors, of gas produced in the state of consumption, were not intended to be covered.[9] Furthermore, *People's*

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[8] § 1(b), H.R. 6586, 75th Cong., 1st Sess. (1937), introduced and reported, H.R. Rep. No. 709, 75th Cong., 1st Sess. (1937).

[9] "Mr. BORAH. Mr. President, as I understand, the bill is confined to the regulation of interstate commerce? Mr. WHEELER . . . . That is all,

Gas Co. v. *Pub. Serv. Comm'n, supra,* upholds this principle notwithstanding the prior transportation of the gas sold with gas produced in another state.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted, and the judgment of the court below should be reversed.

June, 1966

Respectfully submitted,

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and nothing else." 81 Cong. Rec. 9314 (1937) (Senate Debate of H.R. 6586) "Mr. WHEELER . . . . The Federal Power Commission will have power to regulate the price of gas shipped and sold at wholesale in interstate commerce." *Id.* at 9315. "Mr. WHEELER. It will be of the greatest benefit, as a matter of fact, to every large city, and every user of gas that is shipped wholesale. *My State is not at all affected by the bill, because all our gas is produced in the State.* Therefore, the bill does not affect us in the slightest degree; but the authorities of . . . every single city in the United States that imports gas, have written me and begged me and pleaded with me to try to get this bill passed." *Ibid.* "Mr. WHEELER. This bill, of course, could not affect the price charged by the People's Gas Co. (that sold to Chicago for consumption therein) for gas produced in the State of Illinois, but when gas is brought into a State and sold at wholesale, the Federal authorities may simply go to the extent of saying, "A reasonable price for this gas which is shipped at wholesale is so much —just as they fix rates for railroads." *Ibid.* (Emphasis Added)

APPENDIX

STATUTES

15 U.S.C. 717.

* * *"

(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

* * *"

15 U.S.C. 717a.

"When used in this chapter, unless the context otherwise requires—

* * *

(7) 'Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

* * *"

15 U.S.C. 717r.

"(a) Any person, State, municipality, or State Commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate

or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional

evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28.

(c) The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. June 21, 1938, c. 556, § 19, 52 Stat. 831; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub.L. 85-791, § 19, 72 Stat. 947.

OPINION OF COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 21705

LOUISIANA PUBLIC SERVICE COMMISSION, *Petitioner,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

No. 21706

LOUISIANA GAS SERVICE COMPANY, *Petitioner,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

No. 21707

HAMMOND-BATON ROUGE BRICK COMPANY, ET AL, *Petitioners,*

versus

FEDERAL POWER COMMISSION, *Respondent.*

Petitions for Review of Orders of the Federal Power Commission.

(April 6, 1966.)

Before JONES and WISDOM, Circuit Judges, and BREWSTER, District Judge.

BREWSTER, District Judge: The controlling question presented by these petitions to review and set aside an order [1] and the supporting opinions [2] of the Federal Power Commission is whether the sales of natural gas at wholesale by a pipeline company from its integrated, interstate pipeline system are sales at wholesale in interstate commerce

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[1] *United Gas Pipe Line Company,* 30 FPC 560.

[2] Opinions 401 and 401 A, CP 62-161

within the meaning of the Natural Gas Act,[3] where such sales are made within the state where the gas is produced, for ultimate public consumption therein, but the gas so sold

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[3] The Natural Gas Act may sometimes be referred to herein as the "Act". The provisions of the Act pertinent to this case are 15 U.S.C.A. 717 (b) and (c), 717 a (7) o.

Sec. 717 (b): "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas to or the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Sec. 717 (c): "The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State Commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction. . . ."

Sec. 717 a (7): " 'Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

Sec. 717 o: "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe

comes from an admixture of gas, some of which is destined for transportation to and consumption in other states.

Our conclusion is that such sales do come within the terms of the Act, and that they are subject to the rate and certificate regulatory jurisdiction of the Federal Power Commission, rather than that of state utility bodies. We therefore uphold the order of the Commission declaring that it, and not the Louisiana Public Service Commission, had such jurisdiction over certain sales at wholesale by United Gas Pipe Company [4] from its interstate pipelines of natural gas produced from fields in southern Louisiana and in the adjoining offshore continental shelf beyond the regular state boundaries,[5] for ultimate consumption in the Florida Parishes [6] of that State.

The proceeding before the Commission originated with a petition by United for a declaratory order, brought under the provisions of the Act and of the Commission's Rules

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different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. . . ."

[4] The following party designations will appear in the opinion:

Federal Power Commission—"Commission".
Louisiana Public Service Commission—"Louisiana".
United Gas Pipe Line Company—"United".
Louisiana Gas Service Company—"Gas Company".
Hammond Baton Rouge Brick Company—"Brick Company".

[5] While the "onshore" or "offshore" source of the gas in question does not have the importance it had before the Commission, in view of our holding on the question stated at the outset of the opinion, some mention will be made at times of the gas sources in describing the facilities involved. The gas produced from fields within the regular borders of Louisiana will be described as "onshore", while that from fields beyond such borders on that area of the continental shelf submerged in the Gulf of Mexico that would be embraced within the boundaries of Louisiana extended seaward will be called "offshore".

[6] The parishes in the area of Louisiana north of Lake Pontchartrain and east of the Mississippi River are known in that State as the "Florida Parishes".

of Practice and Procedure,[7] with respect to the existence or absence of jurisdiction in the Commission to regulate its sales of gas at wholesale for ultimate consumption in the Florida Parishes. United took no position one way or the other on the question presented. Louisiana, the Gas Company, the Brick Company and others intervened, advocating state rather than federal regulatory jurisdiction. Other interested parties intervened and urged that the Commission had jurisdiction. In due course, the Commission let loose its order and opinions now under attack here, with two of the Commissioners dissenting.

It is conceded that the facts are undisputed, and that only one possible inference may be drawn from them.

United is a natural gas company within the contemplation of the Act, engaged in the business of gathering, transporting and selling natural gas at wholesale for ultimate public consumption. It transports and sells gas both in interstate and intrastate commerce, but gas for both types of sales travels in a commingled stream in the pipelines. The main pipelines involved in this case are part of a fully integrated pipeline system by means of which United transports and sells gas from the states of Texas, Louisiana and Mississippi to industrial customers, pipelines and local distributors in those states and in Alabama and Florida. The question under consideration has no relation to United's purely intrastate pipeline facilities which are completely separate from its interstate system and over which the Commission has not asserted jurisdiction.

The particular portion of United's integrated, interstate

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[7] Regulation

F.P.C., Rules of Practice and Procedure: (18 CFR 1.7(c)):

"Section 1.7 (c). For declaratory orders. Petitions for the issuance, in the discretion of the Commission, of a declaratory order to terminate a controversy or remove uncertainty, shall state clearly and concisely the controversy or uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with a full disclosure of petitioner's interest, and shall conform to the requirements of ## 1.15 and 1.16."

system directly involved here consists of two main pipelines crossing the Florida Parishes on their way from Louisiana to other states, together with the network of interconnecting lines lying between them. A 30 inch line runs from the vicinity of Napoleonville, Louisiana, through the northwest area of these Parishes to Kosciusko, Mississippi. A 14–16 inch line across the southeast portion of the Parishes connects some fields in the area of Lirette, Louisiana with Mobile, Alabama. There are several connections between the two main lines in the Florida Parishes area, making it possible for gas from the two lines to become intermixed. All of the gas gathered from the producers for the Lirette-Mobile line comes from onshore fields, while that for the Napoleonville-Kosciusko line comes from both onshore and offshore fields. When it is so gathered for transportation, some of it is destined for sale at wholesale in Louisiana for ultimate consumption within that State and the balance for transportation to other states for such sale and consumption there. The gas to be sold intrastate is intermixed during transportation with that to be sold interstate, and both types of sales are taken from the commingled stream. In most instances, towns in the Florida Parishes are served from the connecting lines or from the network of smaller lines tying into them, rather than from the main lines. Some of those towns receive gas which comes to the Florida Parishes through only one of the main lines, while others receive gas which is a mixture of that from each of such lines. At the time of the hearing before the Commission, the gas sold by United for consumption in the Florida Parishes represented only a small percentage of that transported in these main lines.

These conditions brought about a conflict resulting from the assertion of jurisdiction by both the Commission and by Louisiana over the same intrastate sales in some portions of the Florida Parishes; and that conflict precipitated the action by United seeking a declaratory order settling the question as to which regulatory body actually had jurisdiction.

The question here involved has been definitely settled against the petitioners by the holding of the Supreme Court

in *California* v. *Lo-Vaca Gathering Co.*, 379 U. S. 366, 85 S.Ct. 486, 13 L.Ed. 2d 357 (1965), and *Federal Power Commission* v. *Amerada Petroleum Corp.*, 379 U. S. 687, 85 S.Ct. 632, 13 L.Ed. 2d 605 (1965), decided since the present action reached this Court. The facts in each of those cases more strongly supported the argument for state jurisdiction over the gas produced, gathered, transported and sold in the same state than do the facts of this proceeding. In each instance, however, the Supreme Court held that the mixing of intrastate gas with a substantial portion of interstate gas for pipeline transportation in one commingled stream gave the Commission jurisdiction "at the outset over the entire transaction". Those decisions require that we uphold the order of the Commission under consideration in this case without passing on the correctness of the Commission's holding on the effect of commingling onshore and offshore gas.

Our disposition of the question above discussed makes moot the issues as to the effect of commingling onshore and offshore gas, and as to whether the Commission should be ordered to re-open the proceedings before it for the reception of further evidence as to recent developments connected with the offshore gas.

The petitions to set aside the order of the Commission are DENIED.

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